



# **DEQ's Wind Energy Permit by Rule: Approach to HISTORIC RESOURCES**

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VIRGINIA ACTS OF  
ASSEMBLY -- 2009  
RECONVENED SESSION  
CHAPTER 808 & 854

Virginia General Assembly  
**“Small Renewable Energy  
Projects” Legislation**  
**HB 2175 & SB 1347**  
**Approved: April 8, 2009**





Directs DEQ to develop by regulations

**“permits by rule . . . for the  
construction and operation of  
small renewable energy projects,**

**including such conditions and  
standards necessary to protect the  
Commonwealth’s natural  
resources”**



# Statutory Goals:

- ✚ **Promote renewable energy** – provide certainty, timeliness, reasonable regulatory requirements
- ✚ **Protect natural resources** – provide enforceable standards that are protective of wildlife & historic resources at/near project site



What is a  
**“small renewable energy  
project”?**



100 MW



An electrical generation facility  
producing electricity from . . .

♻️ biomass

♻️ energy from waste < 20 MW

♻️ municipal solid waste





# Proposed Wind PBR:

9 VAC 15-40

Proposed Text

<http://www.townhall.virginia.gov/L/ViewXML.cfm?textid=4259>

Agency Statement - Town Hall Document (TH-02)

<http://www.townhall.virginia.gov/L/viewstage.cfm?stageid=5451&display=documents>



# New System:

- ✿ Developer applies to DEQ for permit by rule (PBR)
- ✿ Environmental requirements are set forth “up front” in regulation for all sites
- ✿ If applicant meets requirements and submits required certifications, then DEQ notifies applicant that project is authorized under PBR.



# A Permit by Rule (PBR) is . .

- ✿ Expedited permitting process used by DEQ for certain solid waste facilities
- ✿ Regulation stating “up front” the criteria that applicant must meet
- ✿ Requirement that applicant submit docs/certification that has met requirements
- ✿ Requirement that DEQ review submission, in consultation with sister agencies, for completeness & adherence to reg
- ✿ If complete, then DEQ notifies that project is authorized under the PBR



# *DEQ's Operative Provisions 10-1:1197.6.B.7:*

*Applicant shall provide*

“an **ANALYSIS** of the  
beneficial and adverse impacts  
of the proposed project on  
**NATURAL RESOURCES**”



# Operative provisions (continued)

10.1-1197.6.B.8:

- (1) **Department determines**  
if foregoing analysis  
“indicates that  
**significant adverse impacts**  
to **wildlife**  
or **historic resources**  
are **likely**”



*If so, then . . .*

**(2)**

 **MITIGATION PLAN**

 **MEASURE EFFICACY**

***(post-construction monitoring)***



***What  
do provisions mean  
regarding  
historic resources?***



# Analysis of Historic Resources

Pre-Construction Analysis by Professional  
Qualified per DOI

- ✿ Desktop compilation of known resources
- ✿ Architectural field survey
- ✿ Archaeological field survey
- ✿ Report



# Determination of Significant Adverse Impact

DEQ shall find such when prescribed analyses indicate . . .

“proposed project is likely to diminish significantly any aspect of a historic resource’s integrity.”

(See definitions of aspects of integrity at 17VAC5-30-50.)



# Mitigation

## for VLR-Eligible or VLR-Listed

### Architectural

- Avoid or minimize via design or via vegetative or other screening
- If still significant impact, then offset

### Archaeological

- If cannot avoid or minimize, then data recovery



# For further information . . .

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